

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

December 18, 2003

A meeting of the Board of Environmental Protection was held on Thursday, December 18, 2003, at the Holiday Inn / Ground Round facility in Augusta, Maine. Richard Wardwell, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Ernest Hilton, Nancy Anderson, Irving Faunce, Katharine Littlefield, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler, and Matt Scott. Virginia Plummer arrived at 11:00 a.m.

Absent: Note: There is one vacancy

<u>Staff:</u>	<u>Bureau of Land and Water Quality</u>	Stacie Beyer
	<u>Bureau of Land and Water Quality</u>	Judy Gates
	<u>Bureau of Land and Water Quality</u>	Linda Kokemuller

Others: David P. Littell, Deputy Commissioner
Peggy McCloskey, Assistant Attorney General
Carol Blasi, Assistant Attorney General (Mere Point matter only)
Cynthia S. Bertocci, Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 3:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Deputy Commissioner Littell reported the following:

Chapter 137: Changes to Appendix A of Chapter 137 were not reviewed by the stakeholder group; therefore, the Department would like to withdraw the draft rule from consideration. A postponement will allow time for the stakeholders to comment on the changes to the air toxics thresholds before a draft rule is posted to public hearing.

The Board indicated support for the Department's initiative and removed the item from the agenda.

Board member Nancy Anderson asked if the stakeholders requested an opportunity to comment on the changes to Appendix A prior to posting of the rule.

The Deputy Commissioner responded that the postponement was at the Department's initiative; there was no request from interested parties. Staff believe that it is more efficient to obtain an initial round of comments prior to formally posting the rule to a public hearing.

Legislative: The Department has 14 reports due to the Joint Standing Committee on Natural Resources in January. The Department would like to make those reports available to Board members upon request. If members of the Board would like to receive a copy of a particular report, or review the list, please contact either Terry or myself.

The reports due in January include: Mercury Switch Effectiveness, Mercury Thermostats, Dioxin Reduction Annual Report, Changes in Dissolved Oxygen Standards and Bacteria Criteria, Follow-up Report on Household Hazardous Waste, Cumulative Impact, Water Use and Water Withdrawal, Cathode Ray Tub Disposal Report.

Deputy Commissioner: Mr. Littell advised the Board that he has identified some 20 matters where he represented private parties in proceedings before either the Department staff or the Board during his private law practice. He will permanently recuse himself from any further involvement with these projects. These 20 matters are not likely to be before the Board due to the nature of the issues, e.g. site remediation. In addition Maine State Law requires that for one year any matter being handled by his former firm, Pierce Atwood, will necessitate that he recuse himself from participation.

Board member Irving Faunce asked when the one year recusal period ends.

Mr. Littell responded that as of December 1, 2004, he will fully participate in all other matters before the Department and the Board.

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| B. CHAIRMAN'S COMMENTS: | None |
| C. EXECUTIVE ANALYST COMMENTS: | None |
| D. BOARD CALENDAR: | None |
| E. DEPARTMENTAL ORDERS: | Reviewed |
| F. EXECUTIVE SESSION: | None |

II CONSENT AGENDA ITEMS

The Board voted (5-0-2-2) on a motion to approve as presented consent agenda item 1.

Board members Ernest Hilton, Katharine Littlefield, Richard Wardwell, Jean T. Wilkinson, and Nancy Ziegler voted to support the motion. Board members Nancy Anderson and Matt Scott abstained.. Board members Virginia Plummer and Irving Faunce were absent at the time of the vote.

The Board voted (6-0-1-2) on a motion to approve as presented consent agenda item 2.

Board members Ernest Hilton, Katharine Littlefield, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler and Matt Scott voted to support the motion. Board member Nancy Anderson abstained.. Board members Virginia Plummer and Irving Faunce were absent at the time of the vote.

The Board voted (5-0-2-2) on a motion to approve as presented consent agenda item 3.

Board members Ernest Hilton, Katharine Littlefield, Richard Wardwell, Jean T. Wilkinson, and Matt Scott voted to support the motion. Board members Nancy Anderson, and Nancy Ziegler voted to abstain. Board members Virginia Plummer and Irving Faunce were absent at the time of the vote.

1. BEP MINUTES, August 7, 2003 – Approval
2. BEP MINUTES, August 21, 2003 - Approval
3. BEP MINUTES, October 2, 2003 – Approval

The Board voted (8-0-0-1) to approve as presented consent agenda item 4.

Board member Ernest Hilton, Nancy Anderson, Katharine Littlefield, Irving Faunce, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler and Matt Scott voted to approve. Board member Virginia Plummer was absent at the time of the vote.

4. MICHAEL S. FALVEY and FAMILY TREE LANDSCAPING, LLC, Bangor –
Administrative Consent Agreement and Enforcement Order (BLWQ – Land)

III. Regular Agenda

1. ANNE S. HANNUM / Remand (process discussion/decision)

The Board voted (5-3-0-1) on a motion to have the five Board members who participated in the original proceeding re-deliberate on the existing record and issue a new decision. The Board members that participated in the original proceeding are: Ernest Hilton, Katharine Littlefield, Virginia Plummer, Richard Wardwell and Jean T. Wilkinson. The vote was taken pursuant to 38 M.R.S.A. Section 341-D and 06-096 CMR Chapters 2 and 30.

Board members Nancy Anderson, Irving Faunce, Katharine Littlefield, Jean T. Wilkinson and Nancy Ziegler voted to support the motion. Board members Richard Wardwell, Ernest Hilton and Matt Scott voted opposed. Board member Virginia Plummer was absent at the time of the vote.

2. DEPARTMENT OF INLAND FISH & WILDLIFE / Application for Public Boat Ramp at Mere Point (appeal of Third Procedural Order)

The Board voted (8-1-0-0) on a motion to deny the appeal submitted by Friends of Mere Point and affirm the Third Procedural Order. The vote was taken pursuant to 38 M.R.S.A. 341-D and 06-096 CMR Chapters 2 and 30.

Board members Ernest Hilton, Irving Faunce Nancy Anderson, Katharine Littlefield, Virginia Plummer, Richard Wardwell, Nancy Ziegler and Matt Scott voted to support the motion. Board member Jean T. Wilkinson voted opposed to the motion.

3. CHAPTER 137, EMISSION STATEMENT / AMENDMENT (post to public hearing)

This agenda item was withdrawn from Board consideration to allow the stakeholders an opportunity to comment on changes to Appendix A related to reporting requirements._

4. INFORMATIONAL SESSION / Cumulative Impact

The Board heard an overview of the stakeholder process and resultant matrix guidelines developed by staff to assess cumulative impact under the Natural Resources Protection Act. No Vote Was Taken.

5. 2003 DRAFT REPORT TO LEGISLATURE (discussion)

The Board reviewed topics contained in the draft Annual Report and provided comments to the Executive Analyst.